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NATASHA SINGH

v.

CENTRAL BUREAU OF INVESTIGATION (STATE)

B

SUPREME COURT, INDIA
(2013) 5 SUPREME COURT CASES 741
DR B S CHAUHAN J
F M IBRAHIM KALIFULLA J
[CRIMINAL APPEAL NO: 709 OF 2013†]

C

8 MAY 2013

CRIMINAL PROCEDURE: *Criminal Procedure Code, 1973 - Section 311 - Examination of person as witness under - Issue(s) to be considered - Only admissibility/relevance of evidence of witness concerned is to be*

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considered, and not its likely probative value - Held, trial court cannot prejudge evidence of witnesses sought to be examined - Examination of a witness cannot be refused on ground that evidence of that witness would not be conclusive - Only issue to be considered is whether evidence proposed to be adduced is relevant or not - Court can weigh the evidence

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only and only once the same has been laid before it and brought on record - On facts, trial court was not justified in dismissing application of appellant-accused under s. 311 for permission to examine three witnesses, by prejudging evidence of these witnesses and holding the examination unnecessary for the case - Application for their examination, allowed

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EVIDENCE: *Evidence Act, 1872 - Section 45 - Handwriting expert sought to be examined under s. 311 CrPC - Admissibility only of opinion of handwriting expert to be considered at s. 311 CrPC stage, and not whether it would be conclusive - Criminal Procedure Code, 1973, s. 311*

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CRIMINAL PROCEDURE: *Criminal Procedure Code, 1973 - Section 311 - Discretionary power of court under - Scope and object of - When to be exercised, and when not - Matters to be considered - Explained in detail - Held, power under s. 311 is to be exercised judiciously and not arbitrarily so as to enable the court to determine the truth and to render*

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a just decision

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† Arising out of SLP (Crl.) No. 3271 of 2013. From the Judgment and Order dated 8-4-2013 of the High Court of Delhi at New Delhi in Crl. MC No. 1324 of 2013

CRIMINAL PROCEDURE: *Criminal Trial - Fair and speedy trial - Right of accused to fair trial - Adducing evidence in support of defence - Held, is a valuable right and denial of the same amounts to denial of fair trial - Criminal Procedure Code, 1973 - Section 311 - Constitution of India, Art. 21*

CRIMINAL PROCEDURE: *Criminal Trial - Fair and speedy trial - Right of accused to fair trial - Duty of court - Rules of procedure are designed to ensure justice to be scrupulously followed - Court to ensure that there is no breach of the same - Constitution of India, Art. 21*

Allowing the appeal, the Supreme Court

Held:

The scope and object of Section 311 CrPC is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. This power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a *lacuna* in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of Section 311 have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. (Paras 8 and 15)

A *Mir Mohd. Omar v. State of W.B., (1989) 4 SCC 436 : 1989 SCC (Cri) 750*

Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595

Rajeswar Prasad Misra v. State of W.B., AIR 1965 SC 1887 : (1965) 2 Cri LJ 817

B *Rajendra Prasad v. Narcotic Cell, (1999) 6 SCC 110 : 1999 SCC (Cri) 1062*

P. Sanjeeva Rao v. State of A.P., (2012) 7 SCC 56 : (2012) 3 SCC (Cri) 1

C *T. Nagappa v. Y.R. Muralidhar, (2008) 5 SCC 633 : (2008) 2 SCC (Cri) 677, relied on*

Hoffman Andreas v. Inspector of Customs, (2000) 10 SCC 430 : 2001 SCC (Cri) 1488, cited

D Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person E concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that F the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Para 16)

Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376 : 1958 Cri LJ 701

G *Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999*

Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8

Kalyani Baskar v. M.S. Sampoornam, (2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577

H *Vijay Kumar v. State of U.P., (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240*

Sudevanand v. State, (2012) 3 SCC 387 : (2012) 2 SCC (Cri) 179, relied on

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Undoubtedly, an application filed under Section 311 CrPC must be allowed if fresh evidence is being produced to facilitate a just decision, however, in the instant case, the trial court prejudged the evidence of the witness sought to be examined by the appellant-accused, and thereby cause grave and material prejudice to the appellant as regards her defence, which tantamounts to a flagrant violation of the principles of law governing the production of such evidence. By doing so, the trial court reached the conclusion that the production of such evidence by the defence was not essential to facilitate a just decision of the case. Such an assumption is wholly misconceived, and is not tenable in law as the accused has every right to adduce evidence in rebuttal of the evidence brought on record by the prosecution. The court must examine whether such additional evidence is necessary to facilitate a just and proper decision of the case. The request made by the appellant for examination of handwriting expert ought not to have been rejected on the sole ground that the opinion of the handwriting expert would not be conclusive. In such a situation, the only issue that ought to have been considered by the courts below, is whether the evidence proposed to be adduced was relevant or not. Identical is the position regarding the panchnama witness, and the court is justified in weighing evidence, only and only once the same has been laid before it and brought on record. The panch witness may be in a position to depose with respect to whether the documents alleged to have been found, or alleged to have been seized, were actually recovered or not, and therefore, from the point of view of the appellant, his examination might prove to be essential and imperative for facilitating a just decision of the case. (Para 20)

The High Court has simply quoted relevant paragraphs from the judgment of the trial court and has approved the same without giving proper reasons, merely observing that the additional evidence sought to be brought on record was not essential for the purpose of arriving at a just decision. No prejudice would have been caused to the prosecution, if the defence had been permitted to examine the said three witnesses. The judgment and order of the trial court, as well as of the High Court are set aside. The application under Section 311 CrPC filed by the appellant for permission to examine three witnesses is allowed. (Paras 21 and 22)

A *Natasha Singh v. CBI*, Criminal Misc. Case No. 1324 of 2013, decided on 8-4-2013 (Del), *reversed*

O-D/51798/CR

Advocates who appeared in this case:

B *For the appellant - Uday Lalit, Senior Advocate (Hari Shankar K., Kawal Nain and Aditya Verma, Advocates)*

For the respondent - S.P. Singh, Senior Advocate (Syed Tanweer Ahmad, Dinesh Kothari and B.V. Balaram Das, Advocates)

C **Chronological list of cases cited:**

Natasha Singh v. CBI (reversed) Criminal Misc. Case No. 1324 of 2013, decided on 8-4-2013 (Del)

P. Sanjeeva Rao v. State of A.P. (2012) 7 SCC 56 : (2012) 3 SCC (Cri) 1

D *Sudevanand v. State (2012) 3 SCC 387 : (2012) 2 SCC (Cri) 179*

Vijay Kumar v. State of U.P. (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240

T. Nagappa v. Y.R. Muralidhar (2008) 5 SCC 633 : (2008) 2 SCC (Cri) 677

E *Kalyani Baskar v. M.S. Sampoornam (2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577*

Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8

Zahira Habibulla H. Sheikh v. State of Gujarat (2004) 4 SCC 158 :

F *2004 SCC (Cri) 999*

Hoffman Andreas v. Inspector of Customs (2000) 10 SCC 430 : 2001 SCC (Cri) 1488

Rajendra Prasad v. Narcotic Cell (1999) 6 SCC 110 : 1999 SCC (Cri) 1062

G *Mohanlal Shamji Soni v. Union of India 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595*

Mir Mohd. Omar v. State of W.B. (1989) 4 SCC 436 : 1989 SCC (Cri) 750

Rajeswar Prasad Misra v. State of W.B. AIR 1965 SC 1887 : (1965)

H *2 Cri LJ 817*

Talab Haji Hussain v. Madhukar Purshottam Mondkar AIR 1958 SC 376 : 1958 Cri LJ 701

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JUDGMENT

Dr B S Chauhan J:

[1] Leave granted. This appeal has been preferred against the impugned judgment and order dated 8-4-2013 in *Natasha Singh v. CBI*[1], passed by the High Court of Delhi at New Delhi, by way of which it has affirmed the order dated 16-3-2013, passed by the trial court, dismissing the application filed by the appellant under Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), observing that examination of the witnesses sought to be examined by the appellant-accused was in fact unnecessary, and would in no way assist in the process of arriving at a just decision with respect to the case.

[2] The facts and circumstances giving rise to this appeal are as under: an FIR dated 10-8-1998 was registered under Section 120-B read with Sections 420, 467, 468 and 471 of the Penal Code, 1860 (hereinafter referred to as "IPC") and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the 1988 Act") against the appellant and other accused persons. After the conclusion of the investigation, a charge-sheet was filed on 19-7-2001 by the investigating agency i.e. CBI against Smt Rita Singh (A-1); Mrs Natasha Singh (A-2), the appellant; and Mr Y.V. Luthra (A-3), a public servant. In view thereof, charges were framed by the learned trial court on 5-5-2003 against all the three accused.

[3] In support of its case, the prosecution examined 52 witnesses in the course of over 50 hearings and subsequent thereto, the statement of the appellant-accused was recorded on 28-1-2013 to 29-1-2013 and 5-2-2013. The appellant, in her defence examined only one witness, namely, Sudhir Kumar (DW 2) and after proving certain documents closed her defence on 18-2-2013. The other accused, namely, Mr Y.V. Luthra concluded his defence on 19-2-2013, after examining two defence witnesses, namely, Mr A.K. Saxena and Mr Satpal Arora. The trial court thereafter fixed the date for hearing final arguments as 5-3-2013.

[4] The appellant preferred an application under Section 311 CrPC on 5-3-2013 for permission to examine three witnesses. The said application was dismissed by the trial court *vide* order dated

1. Criminal Misc. Case No. 1324 of 2013, decided on 8-4-2013 (Del)

A 16-3-2013, against which the criminal miscellaneous petition filed by the appellant was also dismissed by the High Court, by way of impugned order dated 8-4-2013[1]. Hence, this appeal.

[5] Shri U.U. Lalit, learned Senior Counsel appearing for the
B appellant, has submitted that the FIR was lodged in 1998 and if the prosecution has taken more than a decade to examine 52 witnesses, and that if after the appellant had closed her defence, the other accused had laid evidence in his defence, and that thereafter, without losing any time, the appellant had preferred an
C application seeking permission to examine three witnesses in her defence, and had even given reasons for their examination, the same should not have been dismissed. The trial court has committed an error in appreciating the evidence which could have been provided by the said three witnesses in anticipation. It has
D also been stated that further, there was no delay on the part of the appellant in moving the application. Had this application been allowed by the courts below, no prejudice would have been caused to the respondent. Thus, the appeal deserves to be allowed.

E **[6]** On the contrary, Shri S.P. Singh, learned Senior Counsel appearing for the respondent, has opposed the appeal contending that the courts below have recorded a finding of fact to the extent that the said evidence was not necessary to arrive at a just
F decision, and that it was left to the discretion of the court whether to allow such an application or not. This Court should not interfere with the manner in which such a discretion has been exercised by the courts below. The courts below have considered the case in correct perspective and thus, no interference is called
G for. The appeal lacks merit and is liable to be dismissed.

[7] We have considered the rival submissions made by the learned counsel for the parties and perused the record.

[8] Section 311 CrPC empowers the court to summon a
H material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just

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1. *Natasha Singh v. CBI*, Criminal Misc. Case No. 1324 of 2013, decided on 8-4-2013 (Del)

decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even *suo motu* if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

[9] In *Mir Mohd. Omar v. State of W.B.*[2] this Court examined an issue wherein, after the statement of the accused under Section 313 CrPC had been recorded, the prosecution had filed an application to further examine a witness and the High Court had allowed the same. This Court then held, that once the accused has been examined under Section 313 CrPC, in the event that liberty is given to the prosecution to recall a witness, the same may amount to filling up a *lacuna* existing in the case of the prosecution and therefore, that such an order was uncalled for.

[10] In *Mohanlal Shamji Soni v. Union of India*[3] this Court examined the scope of Section 311 CrPC, and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The court has a duty to determine the truth, and to render a just decision. The same is also the object of Section 311 CrPC, wherein the court may exercise its discretionary authority at any stage of the enquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re-examine any person, though not yet summoned as a witness, who are expected to be able to throw light upon the matter in dispute, because if the judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.

2. (1989) 4 SCC 436 : 1989 SCC (Cri) 750 : AIR 1989 SC 1785
3. 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595 : AIR 1991 SC 1346

[11] In *Rajeswar Prasad Misra v. State of W.B.*[4] this Court dealt with the ample power and jurisdiction vested in the court, with respect to taking additional evidence, and observed, that it may not be possible for the legislature to foresee all situations and possibilities and therefore, the court must examine the facts and circumstances of each case before it, and if it comes to the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered, and if such an action on its part is justified, then the court must exercise such power. The Court further held as under: (*Mohanlal Shamji Soni* case[3], SCC p. 283, para 27)

> 27. ... the criminal court has ample power to summon any person as a witness or recall and re-examine any such person **even if the evidence on both sides is closed** and the jurisdiction of the court must obviously be dictated by **exigency of the situation, and fair play and good sense appear to be the only safe guides** and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case. (emphasis added)

[12] In *Rajendra Prasad v. Narcotic Cell*[5] this Court considered a similar issue and held as under: (SCC p. 113, para 8)

> 8. *Lacuna* in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable *lacuna*. *No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified*. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better. (emphasis added)

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4. AIR 1965 SC 1887 : (1965) 2 Cri LJ 817
3. *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595
5. (1999) 6 SCC 110 : 1999 SCC (Cri) 1062 : AIR 1999 SC 2292

[13] Similarly, in *P. Sanjeeva Rao v. State of A.P.*[6] this Court examined the scope of the provisions of Section 311 CrPC and held as under: (SCC pp. 63-64, paras 20 & 23)

> 20. Grant of fairest opportunity to the accused to prove his innocence is the object of every fair trial, observed this Court in *Hoffman Andreas v. Inspector of Customs*[7]. The following passage is in this regard apposite: (SCC p. 432, para 6)
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> 6. ... In such circumstances, if the new counsel thought to have the material witnesses further examined *the court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.*
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> * * *
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> 23. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. ... we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to the prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself. (emphasis in original)

[14] In *T. Nagappa v. Y.R. Muralidhar*[8], this Court held, that while considering such an application, the court must not imagine or assume what the deposition of the witness would be, in the event that an application under Section 311 CrPC is allowed and appreciate in its entirety, the said anticipated evidence. The Court held as under: (SCC p. 637, para 9)

> 9. What should be the nature of evidence is not a matter which should be left only to the discretion of the court. It is the

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6. (2012) 7 SCC 56 : (2012) 3 SCC (Cri) 1 : AIR 2012 SC 2242
7. (2000) 10 SCC 430 : 2001 SCC (Cri) 1488
8. (2008) 5 SCC 633 : (2008) 2 SCC (Cri) 677 : AIR 2008 SC 2010

A accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is *bona fide* or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses, etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant.

[15] The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a *lacuna* in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

[16] Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (*Vide Talab Haji Hussain v. Madhukar Purshottam Mondkar*[9], *Zahira Habibulla H. Sheikh v. State of Gujarat*[10], *Zahira Habibullah Sheikh (5) v. State of Gujarat*[11], *Kalyani Baskar v. M.S. Sampoornam*[12], *Vijay Kumar v. State of U.P.*[13] and *Sudevanand v. State*[14].)

[17] The instant case is required to be examined in light of the aforesaid settled legal propositions.

[18] The relevant part of the charge-sheet dated 19-7-2001 states, that the insurance claim filed by the appellant was inflated and that therefore, the collusion of a public servant in this respect attracted the provisions of Sections 420, 467, 468, 471 IPC and Section 13 of the 1988 Act. The charge-sheet further revealed that:

> Investigation has revealed that in order to obtain insurance claim, accused Rita Singh (A-1) in her capacity as Director, Mideast (India) Ltd. and accused Natasha Singh (A-2) in her capacity as Director, approached IFCI and in view of the aforesaid necessity for obtaining NOC from financial institutions/banks, Shri S.S. Batra, Company Secretary, MIL *vide* letter dated 1-3-1996 requested IFCI, New Delhi for issuing a NOC for releasing a sum of Rs 3.75 crores as interim on account payment. Shri B.B. Huria, the then Chief General Manager, IFCI recorded a note on

9. AIR 1958 SC 376 : 1958 Cri LJ 701
10. (2004) 4 SCC 158 : 2004 SCC (Cri) 999 : AIR 2004 SC 3114
11. (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8 : AIR 2006 SC 1367
12. (2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577
13. (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240
14. (2012) 3 SCC 387 : (2012) 2 SCC (Cri) 179

this letter for issuing NOC subject to payment of overdues aggregating to Rs 58 lakhs. Despite the fact that there were overdues to the tune of Rs 58,92,197 against Mideast (India) Ltd., accused Y.V. Luthra dishonestly and fraudulently issued NOC dated 1-3-1996 for release of Rs 3.75 crores by the Insurance Company in respect of property at B-12/A Phase II, Noida and he on 2-3-1996 recorded a note in the office copy of the letter dated 1-3-1996 that NOC was issued as there were no overdues as confirmed from the Accounts Department. This NOC dated 1-3-1996 was handed over to the representative of Mideast (India) Ltd., which was presented to Delhi Regional Office of UIICL and on the strength of the said false NOC the Insurance Company's head office at Chennai released a payment of Rs 3.60 crores to Mideast (India) Ltd. *vide* Cheque No. 454431 dated 8-3-1996 which was credited to the account of Mideast (India) Ltd. A sum of Rs 15 lakhs was retained out of the approved amount of Rs 3.75 crores towards payment to PNB Capital Finance.

[19] The trial court, while entertaining the application filed under Section 311 CrPC, had asked the appellant to provide a brief summary of the nature of evidence that would be provided by the defence witnesses mentioned in the application, and in keeping with this, the appellant had furnished an application stating that the appellant wished to examine one Shri B.B. Sharma who was one of the panchnama witnesses, and who the prosecution had neither listed nor examined in court. Therefore, the appellant wished to examine him in defence. The second person was Shri S.S. Batra, Company Secretary of the appellant, as he was the best person to provide greater details of the Company of which the appellant is the Director. The third witness was a handwriting expert, and it was necessary for the defence to examine him regarding the correctness of the signatures of the appellant and others, particularly with respect to the signatures of the appellant.

[20] Undoubtedly, an application filed under Section 311 CrPC must be allowed if fresh evidence is being produced to facilitate a just decision, however, in the instant case, the learned trial court prejudged the evidence of the witness sought to be examined by the appellant, and thereby caused grave and material prejudice to the appellant as regards her defence, which tantamounts to a flagrant violation of the principles of law governing the production of such evidence in keeping with the provisions of Section 311 CrPC. By doing so, the trial court reached the conclusion that the production of such evidence by the defence was not essential to facilitate a just decision of the case. Such an assumption is wholly

misconceived, and is not tenable in law as the accused has every right to adduce evidence in rebuttal of the evidence brought on record by the prosecution. The court must examine whether such additional evidence is necessary to facilitate a just and proper decision of the case. The examination of the handwriting expert may therefore be necessary to rebut the evidence of Rabi Lal Thapa (PW 40), and a request made for his examination ought not to have been rejected on the sole ground that the opinion of the handwriting expert would not be conclusive. In such a situation, the only issue that ought to have been considered by the courts below, is whether the evidence proposed to be adduced was relevant or not. Identical is the position regarding the panchnama witness, and the court is justified in weighing evidence, only and only once the same has been laid before it and brought on record. Mr B.B. Sharma, thus, may be in a position to depose with respect to whether the documents alleged to have been found, or alleged to have been seized, were actually recovered or not, and therefore, from the point of view of the appellant, his examination might prove to be essential and imperative for facilitating a just decision of the case.

[21] The High Court has simply quoted relevant paragraphs from the judgment of the trial court and has approved the same without giving proper reasons, merely observing that the additional evidence sought to be brought on record was not essential for the purpose of arriving at a just decision. Furthermore, the same is not a case where if the application filed by the appellant had been allowed, the process would have taken much time. In fact, disallowing the said application, has caused delay. No prejudice would have been caused to the prosecution, if the defence had been permitted to examine the said three witnesses.

[22] In view of above, the appeal succeeds and is allowed. The judgment and order of the trial court, as well as of the High Court impugned before us, are set aside. The application under Section 311 CrPC filed by the appellant is allowed. The parties are directed to appear before the learned trial court on 17-5-2013, and the learned trial court is requested to fix a date on which the appellant shall produce the three witnesses, and the same may thereafter be examined expeditiously in accordance with law, and without causing any further delay. Needless to say that the prosecution will be entitled to cross-examine them.